

§ 222.172

(vi) Be eligible for funding under section 8002 of the Act (payments for Federal property).

(2) The Secretary must also consider such factors as an LEA's total assessed value of real property that may be taxed for school purposes, its availability and use of bonding capacity, and the nature and severity of its need for modernization funds.

(Authority: 20 U.S.C. 7707(b))

§ 222.172 What activities may an LEA conduct with funds received under this program?

(a) Except as provided in paragraph (c) of this section, an LEA may use emergency grant funds received under this program only to repair, renovate, or alter a public elementary or secondary school facility used for free public education to ensure the health, safety, and well-being of students and personnel.

(b) Except as provided in paragraph (c) of this section, an LEA may use modernization grant funds received under this program only to repair, renovate, alter, or extend a public elementary or secondary school facility used for free public education to provide school facilities that support a contemporary educational program for the LEA's students at normal capacity, and in accordance with the laws, standards, or common practices in the LEA's State.

(c)(1) An emergency or modernization grant under this program may be used for the construction of a new school facility but only if the Secretary determines—

(i) That the LEA holds title to the existing facility for which funding is requested; and

(ii) In consultation with a grantee, that partial or complete replacement of the facility would be less expensive or more cost-effective than improving the existing facility.

(2) When construction of school facilities is permitted, emergency and modernization funds may be used for new school facilities that are used for free public education. This may include the—

(i) Construction of instructional, resource, food service, and general or administrative support areas, so long as

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they are a part of the instructional facility; and

(ii) Purchase of initial equipment, machinery, and initial utility connections.

(Authority: 20 U.S.C. 7707(b))

§ 222.173 What activities are prohibited?

The Secretary does not fund the following activities under this grant:

(a) Improvements on facilities for which the LEA does not have full title or other interest.

(b) Repair, renovation, alteration or construction for stadiums or other facilities that are primarily used for athletic contests, exhibitions, and other events for which admission is charged to the general public.

(c) Except in the limited circumstances as provided in § 222.172(c), when new construction is permissible, acquisition of any interest in real property.

(d) Maintenance costs associated with any of an LEA's school facilities.

(Authority: 20 U.S.C. 7707(b))

§ 222.174 What other prohibitions apply to these funds?

Grant funds under this program may not be used to supplant or replace other available non-Federal construction money. These grant funds may be used for emergency or modernization activities only to the extent that they supplement the amount of construction funds that would, in the absence of these grant funds, be available to a grantee from non-Federal funds for these purposes. Examples follow:

Example 1. "Supplanting": An LEA signs a contract for a \$300,000 roof replacement and plans to use its capital expenditure fund to pay for the renovation. Since the LEA already has non-Federal funds available for the roof project, it may not now use a grant from this program to pay for the project or replace its own funds in order to conserve its capital fund.

Example 2. "Non-supplanting": The LEA above that has the \$300,000 roof commitment has also received a \$400,000 estimate for the replacement of its facility's heating, ventilation, and air conditioning (HVAC) system. The LEA has not made any commitments for the HVAC system because it has no remaining funds available to pay for that work. Since other funds are not available, it would